IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	
	)	
KENNETH W. EASLEY and LOIS J. EASLEY,	)	Bankruptcy Case No. 00-60481
	)	
Debtors.	)	
	)	
EFFINGHAM EQUITY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary Case No. 00-6047
	)	
KENNETH W. EASLEY and LOIS J. EASLEY,	)	
	)	
Defendants.	)	

OPINION

This matter having come before the Court on a Complaint to Determine Dischargeability filed by Plaintiff, Effingham Equity, on September 11, 2000; the Court, having reviewed the written memoranda filed by the parties and the record of Debtors' bankruptcy proceeding, and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The parties have stipulated that the material facts in this matter are not in dispute, and are, in pertinent part, as follows:

1. The Debtors are the Defendants in this adversary proceeding, and they filed for relief under Chapter 12 of the Bankruptcy Code on June 14, 2000.

2. Prior to their filing for bankruptcy under Chapter 12, on May

25, 1999, Defendant, Kenneth W. Easley, executed a Promissory Note/Loan Agreement in favor of the Plaintiff. As security for the Promissory Note, Debtor, Kenneth W. Easley, granted Effingham Equity a security interest in the following items:

> Crops, whether annual or perennial, whether grown, growing or to be grown, and whether harvested or unharvested, and the products thereof and any negotiable or nonnegotiable documents, scale tickets and the like resulting from the storage thereof; also seed, fertilizer, chemicals, and other supplies used or produced by Borrower in farming operations; also accounts, contract rights (including proceeds from insurance policies covering the other Collateral), instruments, documents and general intangibles, whether now owed or hereafter acquired and located in Marion County, Illinois.

3. The security interest in Creditor, Effingham Equity, was duly perfected by the filing of a U.C.C. 1 Financing Statement with the Secretary of State of the State of Illinois, on June 15, 1999.

4. The Plaintiff has seven exhibits admitted into evidence by stipulation, and those exhibits show that, in 1999, Defendant, Kenneth W. Easley, received crop checks totalling $19,860.20 (Plaintiff's Exhibit No. 3). Mr. Easley also received government payments between the dates of October 27, 1999, and June 6, 2000, in the total sum of $16,392.31 (Plaintiff's Exhibit No. 4). Mr. Easley also received a crop insurance check in the amount of $8,936 (Plaintiff's Exhibit No. 5). These payments total $45,188.51 (Plaintiff's Exhibit No. 6). From these funds, Mr. Easley paid to Effingham Equity the sum of $25,736. Prior to the filing of the instant bankruptcy proceeding, Plaintiff, Effingham Equity, sued the Debtor, Kenneth W. Easley, in the Circuit Court of Marion County, Illinois, and was successful in obtaining a judgment against Kenneth W. Easley in the amount of $12,062.17. In the

instant adversary proceeding, Effingham Equity seeks to have the Marion County Circuit Court Judgment declared nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

The main issue before the Court concerns the Defendants' failure to pay over a significant portion of the government payments listed in Plaintiff's Exhibit No. 4, in which Plaintiff claims a security interest. There is no issue as to payment of crop proceeds, nor is there an issue as to the payment of the crop insurance proceeds, which Plaintiff acknowledges it received in due course. It is apparent from reviewing Debtors' bankruptcy petition and the evidence and memoranda filed by the parties that the balance of the monies which were claimed by the Plaintiff as security for its indebtedness were actually paid to the Farmers State Bank of Hoffman on indebtedness owed to it by the Debtors.

The Plaintiff's Complaint for nondischargeability is brought pursuant to 11 U.S.C. §§ 1228(a)(2) and 523(a)(6). Pursuant to 11 U.S.C. § 1228(a)(2), it is stated that:

> (a) . . . the court shall grant the debtor a discharge of all debts provided for by the plan . . . except any debt - . . .
>
> (2) of the kind specified in section 523(a) of this title.

Section 523(a)(6) provides:

> (a) A discharge under section . . . 1228(a) . . . of this title does not discharge an individual debtor from any debt - . . .
>
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

To declare a debt to be nondischargeable pursuant to 11 U.S.C. §

523(a)(6), the plaintiff must prove by a preponderance of the evidence that the debt arose from a deliberate and intentional injury inflicted by the debtor upon the plaintiff or property of the plaintiff and not merely a deliberate and intentional act which led to the injury. See: Kawaauhau v. Geiger, 523 U.S. 57, 188 S.Ct. 974 (1998). Following the Supreme Court's pronouncement in Geiger, the creditor must show that a debtor subjectively intended to cause the injury to the creditor and not merely intended the act which resulted in the injury. See: In re Powers, 227 B.R. 73 (Bankr. E.D. Va. 1998); and In re Moore, Bankruptcy Case No. 98-70726, Adversary No. 98-7090 (Bankr. C.D. Ill. 1999).

In order to prove that a willful and malicious injury resulted from conversion of secured collateral, plaintiff must prove that its interest in collateral was converted by the defendant and that the conversion was in the nature of an intentional tort rather than a negligent or reckless act. In re Moore, supra; and In re Kidd, 219 B.R. 278, at 284 (Bankr. D. Mont. 1998). In order for the Plaintiff in this case to be successful under 11 U.S.C. § 523(a)(6), it must show that the government payments in question were its collateral and that the collateral was disposed of without its authorization, either express or implied. See: In re Iaquinta, 98 B.R. 919 (Bankr. N.D. Ill. 1989). Additionally, Plaintiff must show by a preponderance of the evidence that the act of conversion was a willful and malicious act intended by the Debtors to cause injury to the Plaintiff. See: In re Kidd, supra; and In re Thomason, 225 B.R. 751 (Bankr. D. Idaho 1998).

In the instant case, the Court finds that the government payments in question were, in fact, collateral of the Plaintiff, Effingham

Equity, by virtue of the inclusion of language in the security agreement and financing statement covering general intangibles and contract rights. This conclusion is supported by the Seventh Circuit decision of In re Schmaling, 783 F.2d 680 (7th Cir. 1986); and In re Klaus, 247 B.R. 761 (Bankr. C.D. Ill. 2000).

While holding that the government payments in question were collateral of the Plaintiff, Effingham Equity, the Court must conclude, based upon the uncontroverted facts before it, that there was no conversion rising to the level necessary for the Plaintiff to be able to show a willful and malicious injury pursuant to 11 U.S.C. § 523(a)(6). Clearly, there was a technical conversion of the Plaintiff's collateral, but the Court is unable to find any evidence to suggest that the Debtors' actions in paying over portions of the collateral to the Farmers State Bank of Hoffman was intended to cause injury to the Plaintiff. It is apparent from the course of dealings between the parties that the Plaintiff was aware that the Debtors were commingling funds from the grain proceeds and government payments in their bank account; the proceeds checks were delivered to the Debtors without restriction; and the Debtors were depositing the funds in their bank accounts with other funds and using them for operation of their farm. Although proof of willful and malicious conduct need not be proven by direct evidence and may be inferred from the circumstances, it is clear to the Court that the Debtors/Defendants in this action were acting in good faith and under the mistaken belief that they were free to use the government payments in question as they saw fit. Furthermore, the Court finds that there is no evidence to suggest that

the Debtors were acting with malice or any intent to directly injure the Plaintiff herein. As such, the Court must conclude that the Plaintiff has failed to prove its case pursuant to 11 U.S.C. § 523(a)(6), and that the debt in question resulting from the Judgment in the Circuit Court of Marion County, Illinois, should be declared dischargeable in the Debtors' bankruptcy proceeding.

ENTERED: **February 28, 2001**

/s/ GERALD D. FINES
United States Bankruptcy Judge